

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee

3 Representative Moraitis offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 79 and 80, insert:

7 Section 3. Subsections (1) and (3) of section 736.0109,
8 Florida Statutes, are amended to read:

9 736.0109 Methods and waiver of notice.—

10 (1) Notice to a person under this code or the sending of a
11 document to a person under this code must be accomplished in a
12 manner reasonably suitable under the circumstances and likely to
13 result in receipt of the notice or document. Permissible methods
14 of notice or for sending a document include first-class mail,
15 personal delivery, delivery to the person's last known place of
16 residence or place of business, ~~or~~ a properly directed facsimile

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17 | or other electronic message, or posting to a secure electronic
18 | account or website in accordance with subsection (3).

19 | (3) A document that is sent solely by posting to an
20 | electronic account or website is not deemed sent for purposes of
21 | this section unless the sender complies with this subsection.
22 | The sender has the burden of proving compliance with this
23 | subsection ~~In addition to the methods listed in subsection (1)~~
24 | ~~for sending a document, a sender may post a document to a secure~~
25 | ~~electronic account or website where the document can be~~
26 | ~~accessed.~~

27 | (a) ~~Before a document may be posted to an electronic~~
28 | ~~account or website,~~ The recipient must sign a separate written
29 | authorization solely for the purpose of authorizing the sender
30 | to post documents on an electronic account or website before
31 | such posting. The written authorization must:

32 | 1. Specifically indicate whether a trust accounting, trust
33 | disclosure document, or limitation notice, as those terms are
34 | defined in s. 736.1008(4), will be posted in this manner, and
35 | generally enumerate the other types of documents that may be
36 | posted in this manner.

37 | 2. Contain specific instructions for accessing the
38 | electronic account or website, including the security procedures
39 | required to access the electronic account or website, such as a
40 | username and password.

41 | 3. Advise the recipient that a separate notice will be

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42 sent when a document is posted to the electronic account or
43 website and the manner in which the separate notice will be
44 sent.

45 4. Advise the recipient that the authorization to receive
46 documents by electronic posting may be amended or revoked at any
47 time and include specific instructions for revoking or amending
48 the authorization, including the address designated for the
49 purpose of receiving notice of the revocation or amendment.

50 5. Advise the recipient that posting a document on the
51 electronic account or website may commence a limitations period
52 as short as 6 months even if the recipient never actually
53 accesses the electronic account, electronic website, or ~~the~~
54 document.

55 (b) Once the recipient signs the written authorization,
56 the sender must provide a separate notice to the recipient when
57 a document is posted to the electronic account or website. As
58 used in this subsection, the term "separate notice" means a
59 notice sent to the recipient by means other than electronic
60 posting that, ~~which~~ identifies each document posted to the
61 electronic account or website and provides instructions for
62 accessing the ~~posted~~ document. The separate notice requirement
63 is deemed satisfied if the recipient accesses the document on
64 the electronic account or website.

65 (c) A document sent by electronic posting is deemed
66 received by the recipient on the earlier of the date on which

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67 ~~that~~ the separate notice is received or the date on which ~~that~~
68 the recipient accesses the document on the electronic account or
69 website.

70 (d) At least annually after a recipient signs a written
71 authorization, a sender shall send a notice advising recipients
72 who have authorized one or more documents to be posted to an
73 electronic account or website that such posting may commence a
74 limitations period as short as 6 months even if the recipient
75 never accesses the electronic account or website or the document
76 and that authority to receive documents by electronic posting
77 may be amended or revoked at any time. This notice must be given
78 by means other than electronic posting and may not be
79 accompanied by any other written communication. Failure to
80 provide such notice within 380 days after the last notice is
81 deemed to automatically revoke the authorization to receive
82 documents in the manner permitted under this subsection 380 days
83 after the last notice is sent.

84 (e) The notice required in paragraph (d) may be in
85 substantially the following form: "You have authorized the
86 receipt of documents through posting to an electronic account or
87 website on which ~~where~~ the documents can be accessed. This
88 notice is being sent to advise you that a limitations period,
89 which may be as short as 6 months, may be running as to matters
90 disclosed in a trust accounting or other written report of a
91 trustee posted to the electronic account or website even if you

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92 never actually access the electronic account or website or the
93 documents. You may amend or revoke the authorization to receive
94 documents by electronic posting at any time. If you have any
95 questions, please consult your attorney."

96 (f) A sender may rely on the recipient's authorization
97 until the recipient amends or revokes the authorization by
98 sending a notice to the address designated for that purpose in
99 the authorization or in the manner specified on the electronic
100 account or website. The recipient, at any time, may amend or
101 revoke an authorization to have documents posted on the
102 electronic account or website.

103 (g) If a document is provided to a recipient solely
104 through electronic posting and is deemed sent for purposes of
105 this section:

106 1. The recipient must be able to access and print or
107 download the document until the earlier of:

108 a. The date on which the recipient's access to the
109 electronic account or website is terminated for any reason; or

110 b. ~~Four must remain accessible to the recipient on the~~
111 ~~electronic account or website for at least 4 years after the~~
112 date on which ~~that~~ the document is deemed received by the
113 recipient.

114 2. If the recipient's access to the electronic account or
115 website is terminated for any reason, such termination does not
116 invalidate the notice or sending of any document previously

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117 posted on the electronic account or website in accordance with
118 this subsection ~~The electronic account or website must allow the~~
119 ~~recipient to download or print the document. This subsection~~
120 ~~does not affect or alter the duties of a trustee to keep clear,~~
121 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
122 ~~or alter the time periods for which the trustee must maintain~~
123 ~~those records.~~

124 3. If the recipient's access to the electronic account or
125 website is terminated by the sender before the time period set
126 forth in sub-subparagraph 1.b., any applicable limitations
127 period set forth in s. 736.1008(1) or (2) that is still open is
128 tolled for any information adequately disclosed in such document
129 as follows:

130 a. From the date on which the recipient's access to the
131 electronic account or website is terminated by the sender until
132 45 days after the date on which the sender provides notification
133 of such termination to the recipient by means other than
134 electronic posting, and:

135 (I) The recipient requests that any documents sent during
136 the prior 4 years solely through electronic posting be provided
137 to him or her by other means at no cost; or

138 (II) The recipient's access to the electronic account or
139 website is restored; or

140 b. From the date on which any request is made pursuant to
141 sub-sub-subparagraph 3.a.(I) until 20 days after the date on

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142 which the requested documents are provided to the recipient by
143 means other than electronic posting.

144 (h) For purposes of this subsection, access to an
145 electronic account or website is terminated by the sender when
146 the sender unilaterally terminates the recipient's ability to
147 access the electronic website or account or download or print
148 any document posted on such website or account. Access is not
149 terminated by the sender when access is terminated by an action
150 of the recipient or by an action of the sender in response to
151 the recipient's request to terminate access. The recipient's
152 revocation of authorization pursuant to paragraph (f) is not
153 considered a request to terminate access ~~To be effective, the~~
154 ~~posting of a document to an electronic account or website must~~
155 ~~be done in accordance with this subsection. The sender has the~~
156 ~~burden of establishing compliance with this subsection.~~

157 (i) This subsection does not affect or alter the duties of
158 a trustee to keep clear, distinct, and accurate records pursuant
159 to s. 736.0810 or affect or alter the time periods for which the
160 trustee must maintain such records ~~preclude the sending of a~~
161 ~~document by other means.~~

162 (j) This subsection governs the posting of a document
163 solely for the purpose of giving notice under this code or the
164 sending of a document to a person under this code and does not
165 prohibit or otherwise apply to the posting of a document to an
166 electronic account or website for any other purpose or preclude

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167 | the sending of a document by any other means.

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170

T I T L E A M E N D M E N T

171

Remove line 6 and insert:

172

beneficiaries; amending s. 736.0109, F.S.; revising provisions

173

relating to notice or sending of electronic trust documents;

174

providing requirements for such documents to be deemed sent;

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requiring a certain authorization to specify documents subject

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to electronic posting; revising requirements for a recipient to

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electronically access such documents; prohibiting the

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termination of a recipient's electronic access to such documents

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from invalidating certain notice or sending; tolling specified

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limitations periods under certain circumstances; providing

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requirements for electronic access to such documents to be

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deemed terminated by a sender; providing applicability; amending

183

s. 736.0110, F.S.; providing